

As Amended by House Committee

Session of 2018

HOUSE BILL No. 2580

By Committee on Judiciary

1-30

1 AN ACT concerning unfair trade and consumer protection; relating to the
2 fair credit reporting act; security freeze on consumer report; fees;
3 amending K.S.A. 50-722 and K.S.A. 2017 Supp. 50-723 **and 50-725**
4 and repealing the existing sections.

5
6 *Be it enacted by the Legislature of the State of Kansas:*

7 Section 1. K.S.A. 50-722 is hereby amended to read as follows: 50-
8 722. K.S.A. 50-701 to ~~50-722, inclusive~~ through 50-725, and amendments
9 thereto, may be cited as the fair credit reporting act.

10 Sec. 2. K.S.A. 2017 Supp. 50-723 is hereby amended to read as
11 follows: 50-723. (a) A consumer may elect to place a security freeze on the
12 consumer's consumer report by written request, sent by certified mail or
13 regular mail, through a secure website if made available by a consumer
14 reporting agency, or by telephone, if the consumer reporting agency does
15 not have an available secure website. A consumer reporting agency shall
16 place a security freeze on a consumer's consumer report no later than five
17 business days after receiving:

18 (1) A request provided by this subsection; and

19 (2) proper identification.

20 (b) When a security freeze is in place, information from a consumer
21 report shall not be released to a third party without prior express
22 authorization from the consumer. This subsection shall not prevent a
23 consumer reporting agency from advising a third party that a security
24 freeze is in effect with respect to a consumer report.

25 (c) The consumer reporting agency, no later than 10 business days
26 after the date the agency places a security freeze, shall provide the
27 consumer with a unique personal identification number, password or
28 similar device to be used by the consumer when providing authorization
29 for the access to the consumer's consumer report for a specific period of
30 time. In addition, the consumer reporting agency shall simultaneously
31 provide to the consumer in writing the process of placing, removing and
32 temporarily lifting a security freeze and the process for allowing access to
33 information from the consumer's consumer report for a specific period
34 while the security freeze is in effect.

35 (d) If, in connection with an application for credit or any other use, a
36 third party requests access to a consumer report on which a security freeze

1 is in effect, the third party may treat the application as incomplete if the
2 consumer does not allow the consumer's consumer report to be accessed
3 for that specific period of time.

4 (e) If the consumer wishes to allow the consumer's consumer report
5 or score to be accessed for a specific period of time while a freeze is in
6 place, the consumer shall contact the consumer reporting agency, request
7 that the freeze be temporarily lifted and provide the following:

8 (1) Clear and proper identification;

9 (2) the unique personal identification number or password provided
10 by the consumer reporting agency in accordance with subsection (c); and

11 (3) the proper information regarding the time period for which the
12 report shall be available to users of the consumer report.

13 (f) (1) A consumer reporting agency that receives a request from a
14 consumer to temporarily lift a freeze on a consumer report pursuant to
15 subsection (e) shall comply with the request:

16 (A) No later than three business days after receiving the request if the
17 request is made at a postal address designated by the agency to receive
18 such requests; or

19 (B) fifteen minutes after the request is received by the consumer
20 reporting agency through the electronic contact method chosen by the
21 consumer reporting agency in accordance with this section and such
22 request is received between 6:00 a.m. and 9:30 p.m. in the central time
23 zone.

24 (2) A consumer reporting agency is not required to temporarily lift a
25 security freeze within the time provided in subsection (f)(1)(B) if the
26 consumer fails to meet the requirements of subsection (e) or the consumer
27 reporting agency's ability to temporarily lift the security freeze within 15
28 minutes is prevented by:

29 (A) An act of God, including, but not limited to, fire, earthquake,
30 hurricane, storm or similar natural disaster or phenomena;

31 (B) unauthorized or illegal acts by a third party, including, but not
32 limited to, terrorism, sabotage, riot, vandalism, labor strikes or disputes
33 disrupting operations or similar occurrence;

34 (C) operational interruption, including, but not limited to, electrical
35 failure, unanticipated delay in equipment or replacement part delivery,
36 computer hardware or software failures inhibiting response time or similar
37 disruption;

38 (D) governmental action, including, but not limited to, emergency
39 orders or regulations, judicial or law enforcement action or similar
40 directives;

41 (E) regularly scheduled maintenance, other than during normal
42 business hours, of or updates to the consumer reporting agency's systems;
43 or

1 (F) commercially reasonable maintenance of or repair to the
2 consumer reporting agency's systems that is unexpected or unscheduled.

3 (g) A consumer reporting agency shall remove or temporarily lift a
4 freeze placed on a consumer's consumer report only in the following cases:

5 (1) Upon consumer request as provided in this section; or

6 (2) if the consumer's consumer report was frozen due to a material
7 misrepresentation of fact by the consumer, in which case, if a consumer
8 reporting agency intends to remove a freeze upon the consumer's
9 consumer report, the consumer reporting agency shall notify the consumer
10 in writing prior to removing the freeze on the consumer's consumer report.

11 (h) A security freeze shall remain in place until the consumer requests
12 that the security freeze be removed. A consumer reporting agency shall
13 remove a security freeze within three business days after receiving a
14 request for removal from the consumer, who shall be required to provide:

15 (1) Clear and proper identification; and

16 (2) the unique personal identification number or password provided
17 by the consumer reporting agency in accordance with subsection (c).

18 (i) A security freeze does not apply to a consumer report provided to:

19 (1) A federal, state or local governmental entity, including a law
20 enforcement agency or court, or agents or assigns thereof;

21 (2) a private collection agency for the sole purpose of assisting in the
22 collection of an existing debt of the consumer who is the subject of the
23 consumer report requested;

24 (3) a person or entity, or a subsidiary, affiliate or agent of such person
25 or entity, or an assignee of a financial obligation owing by the consumer to
26 such person or entity, or a prospective assignee of a financial obligation
27 owing by the consumer to such person or entity in conjunction with the
28 proposed purchase of the financial obligation, with which the consumer
29 has or had prior to assignment of an account or contract, including a
30 demand deposit account, or to whom the consumer issued a negotiable
31 instrument, for the purposes of reviewing the account or collecting the
32 financial obligation owing for the account, contract, or negotiable
33 instrument. For purposes of this paragraph, "reviewing the account"
34 includes activities related to account maintenance, monitoring, credit line
35 increases and account upgrades and enhancements;

36 (4) a subsidiary, affiliate, agent, assignee or prospective assignee of a
37 person to whom access has been granted under subsection (e) for the
38 purposes of facilitating the extension of credit;

39 (5) a person providing a credit report for the purposes permitted
40 under 15 U.S.C. § 1681b(c);

41 (6) any person providing a consumer with a copy of the consumer's
42 own report at such consumer's request;

43 (7) a child support enforcement agency;

1 (8) a consumer reporting agency that acts only as a reseller of credit
2 information by assembling and merging information contained in the
3 database of another consumer reporting agency or multiple consumer
4 reporting agencies and does not maintain a permanent database of credit
5 information from which new consumer reports are produced; however, a
6 consumer reporting agency acting as a reseller shall honor any security
7 freeze placed on a consumer report by another consumer reporting agency;

8 (9) a check services or fraud prevention services company, which
9 issues reports on incidents of fraud or authorizations for the purpose of
10 approving or processing negotiable instruments, electronic funds transfers
11 or similar methods of payments;

12 (10) a deposit account information service company which issues to
13 inquiring banks or other financial institutions, for use only in reviewing a
14 consumer request for a deposit account at the inquiring bank or financial
15 institution, reports regarding account closures due to fraud, substantial
16 overdrafts, ATM abuse or similar negative information regarding a
17 consumer;

18 (11) an employer in connection with any application for employment
19 with the employer;

20 (12) any person administering a credit file monitoring subscription
21 service to which the consumer has subscribed; or

22 (13) any person or entity for use in setting or adjusting a rate,
23 adjusting a claim or underwriting for insurance purposes.

24 (j) ~~Except as otherwise provided in this section, A consumer reporting~~
25 ~~agency may shall not charge a fee not to exceed \$5 for placing,~~
26 ~~temporarily lifting or removing each freeze. The consumer reporting~~
27 ~~agency shall not charge a fee or for replacing a previously requested~~
28 ~~personal identification number. Such agency shall not charge a fee to a~~
29 ~~victim of identity theft for placing, temporarily lifting or removing a~~
30 ~~security freeze on a consumer report, provided that at the time of~~
31 ~~requesting a freeze the victim provides to the agency a valid copy of a~~
32 ~~police report, investigative report or complaint the consumer has filed with~~
33 ~~a law enforcement agency.~~

34 (1) A person who has learned or reasonably suspects that the person
35 has been a victim of identity theft may contact the local law enforcement
36 agency that has jurisdiction over the person's actual residence, which shall
37 take a police report of the matter, and provide the complainant with a copy
38 of that report. Notwithstanding the fact the jurisdiction may be elsewhere
39 for investigation and prosecution of a crime of identity theft, any local or
40 state law enforcement agency shall take the complaint and provide the
41 complainant with a copy of the complaint and may refer the complainant
42 to a law enforcement agency in a different jurisdiction.

43 (2) Nothing in this section shall be construed to interfere with the

1 discretion of a law enforcement agency to allocate resources for
2 investigation of crimes. A complaint filed under this section is not required
3 to be counted as an open case for statistical reporting purposes.

4 (k) If a security freeze is in place, a consumer reporting agency shall
5 not change any of the following official information in the consumer
6 report without sending a written confirmation of the change to the
7 consumer within 30 days after the change is posted to the consumer's file:
8 Name, date of birth, social security number and address. Written
9 confirmation is not required for technical modifications of a consumer's
10 official information, including name and street abbreviations, complete
11 spellings or transposition of numbers or letters. In the case of an address
12 change, the written confirmation shall be sent to both the new address and
13 to the former address.

14 (l) Any person who willfully fails to comply with any requirement
15 imposed under this subchapter with respect to any consumer is liable to
16 that consumer in an amount equal to the sum of:

17 (1) Actual damages sustained by the consumer as a result of the
18 failure or damages of not less than \$100 and not more than \$1,000; or

19 (2) such amount of punitive damages as the court may allow; and

20 (3) in the case of any successful action to enforce any liability under
21 this section, the costs of the action together with reasonable attorney's fees
22 as determined by the court.

23 (m) Any person who obtains a consumer report, requests a security
24 freeze, requests the temporary lift of a freeze, or the removal of a security
25 freeze from a consumer reporting agency under false pretenses or in an
26 attempt to violate federal or state law shall be liable to the consumer
27 reporting agency for actual damages sustained by the consumer reporting
28 agency or \$1,000, whichever is greater.

29 (n) Any person who is negligent in failing to comply with any
30 requirement imposed under this section with respect to any consumer, is
31 liable to that consumer in an amount equal to the sum of:

32 (1) Any actual damages sustained by the consumer as a result of the
33 failure; and

34 (2) in the case of any successful action to enforce any liability under
35 this section, the costs of the action together with reasonable attorney's fees
36 as determined by the court.

37 (o) Upon a finding by the court that an unsuccessful pleading, motion
38 or other paper filed in connection with an action under this section was
39 filed in bad faith or for purposes of harassment, the court shall award to
40 the prevailing party attorney's fees reasonable in relation to the work
41 expended in responding to the pleading, motion or other paper.

42 (p) This section shall be part of and supplemental to the fair credit
43 reporting act.

1 (q) This section shall take effect and be in force on and after January
2 1, 2007.

3 (r) Notwithstanding any other provision of law to the contrary, the
4 exclusive authority to bring an action for any violation of subsection (f)(1)
5 (B) shall be with the attorney general.

6 **Sec. 3. K.S.A. 2017 Supp. 50-725 is hereby amended to read as**
7 **follows: 50-725. (a) A consumer reporting agency shall place a security**
8 **freeze for a protected consumer if the consumer reporting agency**
9 **receives a request from the protected consumer's representative for**
10 **the placement of the security freeze and the protected consumer's**
11 **representative:**

12 (1) Submits the request to the consumer reporting agency at the
13 address or other point of contact and in the manner specified by the
14 consumer reporting agency;

15 (2) provides to the consumer reporting agency sufficient proof of
16 identification of the protected consumer and the representative; *and*

17 (3) provides to the consumer reporting agency sufficient proof of
18 authority to act on behalf of the protected consumer; *and*

19 ~~(4) pays to the consumer reporting agency a fee as provided in~~
20 ~~subsection (g).~~

21 (b) If a consumer reporting agency does not have a record
22 pertaining to a protected consumer when the consumer reporting
23 agency receives a request under subsection (a), the consumer
24 reporting agency shall create a record for the protected consumer.

25 (c) Within 30 days after receiving a request that meets the
26 requirements of subsection (a), a consumer reporting agency shall
27 place a security freeze for the protected consumer.

28 (d) Unless a security freeze for a protected consumer is removed
29 in accordance with subsection (f) or (i), a consumer reporting agency
30 shall not release the protected consumer's consumer report, any
31 information derived from the protected consumer's consumer report,
32 or any record created for the protected consumer.

33 (e) A security freeze for a protected consumer placed under
34 subsection (c) shall remain in effect until:

35 (1) The protected consumer or the protected consumer's
36 representative requests the consumer reporting agency to remove the
37 security freeze in accordance with subsection (f); or

38 (2) the security freeze is removed in accordance with subsection
39 (i).

40 ~~(f)–(i)~~ If a protected consumer or a protected consumer's
41 representative wishes to remove a security freeze for a protected
42 consumer, the protected consumer or the protected consumer's
43 representative shall:

1 (A)(1) **Submit a request for the removal of the security freeze to**
2 **the consumer reporting agency at the address or other point of contact**
3 **and in the manner specified by the consumer reporting agency; and**

4 (B)(2) **provide to the consumer reporting agency sufficient proof**
5 **of identification of the protected consumer and:**

6 (i)(A) **For a request by the protected consumer, proof that the**
7 **sufficient proof of authority for the protected consumer's**
8 **representative to act on behalf of the protected consumer is no longer**
9 **valid; or**

10 (ii)(B) **for a request by the representative of a protected consumer,**
11 **sufficient proof of identification of the representative and sufficient proof**
12 **of authority to act on behalf of the protected consumer; and**

13 (C) ~~pay to the consumer reporting agency a fee as provided in~~
14 ~~subsection (g).~~

15 (g) ~~(1) Except as otherwise provided in subsection (g)(2), A~~
16 ~~consumer reporting agency shall not charge a fee for any service~~
17 ~~performed under this section.~~

18 ~~(2) A consumer reporting agency may charge a reasonable fee, not~~
19 ~~exceeding \$10, for each placement or removal of a security freeze for a~~
20 ~~protected consumer, except a consumer reporting agency shall not charge~~
21 ~~any fee under this section if:~~

22 ~~(A) The protected consumer's representative has obtained a police~~
23 ~~report or provided an affidavit of alleged fraud against the protected~~
24 ~~consumer and provides a copy of the report or the affidavit to the~~
25 ~~consumer reporting agency; or~~

26 ~~(B) a request for the placement or removal of a security freeze is for a~~
27 ~~protected consumer who is under the age of 18 years at the time of the~~
28 ~~request and the consumer reporting agency has a consumer report~~
29 ~~pertaining to the protected consumer.~~

30 **(h) This section shall not apply to:**

31 **(1) A person administering a credit file monitoring subscription**
32 **service to which the protected consumer has subscribed or the**
33 **representative of the protected consumer has subscribed on behalf of**
34 **the protected consumer;**

35 **(2) a person providing the protected consumer or the protected**
36 **consumer's representative with a copy of the protected consumer's**
37 **consumer report on request of the protected consumer or the**
38 **protected consumer's representative; or**

39 **(3) a person or entity listed in K.S.A. 2017 Supp. 50-723(i)(1) and**
40 **(6) through (12) or 50-724(a)(1) through (5), and amendments thereto.**

41 **(i) A consumer reporting agency may remove a security freeze for**
42 **a protected consumer or delete a record of a protected consumer if**
43 **such security freeze was placed or the record was created based on a**

1 **material misrepresentation of a fact by the protected consumer or the**
2 **protected consumer's representative.**

3 **(j) Any person who fails to comply with any requirement imposed**
4 **under this section with respect to any protected consumer shall be**
5 **liable pursuant to the provisions of the fair credit reporting act.**

6 **(k) This section shall be part of and supplemental to the fair**
7 **credit reporting act.**

8 ~~Sec. 3.~~ **4.** K.S.A. 50-722 and K.S.A. 2017 Supp. 50-723 **and 50-725**
9 are hereby repealed.

10 ~~Sec. 4.~~ **5.** This act shall take effect and be in force from and after its
11 publication in the statute book.